IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

WP(C).No. 32687 of 2006(N)

PETITIONER:

B.RAVINDRAN NAIR, PADAMADATHIL HOUSE,
XIV/71, PERUVARAM, NORTH PARAVUR.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, LOCAL SELF
GOVERNMENT DEPARTMENT, THIRUVANANTHAPURAM.

2. THE PARAVUR MUNICIPALITY,
MUNCIPAL OFFICE, NORTH PARAVUR,
REPRESENTED BY ITS SECRETARY.

3. THE SECRETARY, PARAVUR MUNCIPALITY,
MUNCIPAL OFFICE, NORTH PARAVUR.

4. V.U.KOUSALYA, KALATHIPARAMBIL HOUSE,
PADAMADAM ROAD, PERUVARAM, NORTH PARAVUR-683 513.

R1 BY GOVT.PLEADER SMT.T.B.RAMANI.
R2 & R3 BY ADV. SRI.T.A.SHAJI
SMT.T.V.NEEMA
SMT.RAGAM.S.MOHAN
R4 BY ADV.SRI.PIUS C.MUNDADAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.32687 OF 2006

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DATED THIS THE 12TH MARCH, 2007

J U D G M E N T

The petitioner, a resident of the 2nd respondent-Paravur Municipality and a neighbour of the 4th respondent, one V.U.Kousalya has filed this Writ Petition arraying the State (1st respondent), the Paravur Municipality (2nd respondent), the Secretary of the Paravur Municipality (3rd respondent) and Smt.V.U.Kousalya (4th respondent), seeking mainly two reliefs:-

i) quash Ext.P9 building permit and Ext.P11 order issued by the Municipality in respect of construction of a building by the 4th respondent on her property;

ii) quash Ext.P13 notification issued by the Municipality in so far as the same relates to serial No.12 therein, holding that the proposal is unnecessary, wasteful and motivated.

2. The petitioner submits that a drainage canal flows through the property of the 4th respondent and that the 4th respondent has already filled up a portion of that canal and is presently going to fill up the remaining portions also. The petitioner apprehends that the building permit which has been issued by the Municipality to the 4th respondent will enable her to fill up the drainage canal which will cause severe

water logging in the area and damage to the public road running through the southern side of her property. The 4th respondent, it is submitted, has a total extent of 31.75 cents of land out of which 10.75 cents is covered by document No.3219/1969 while the remaining extent of 21 cents is covered by document No.4995 of 1978. The petitioner's residence is just opposite to the property of the 4th respondent and is on the southern side of Padamadam road. His residential property has an extent of 13.750 cents and apart from that he has a further extent of 6.30 cents on the eastern side of the 4th respondent's property. Ext.P1 rough sketch has been produced by him to show that there is a drainage canal running to the north of the property of the 4th respondent till its boundary and thereafter flowing through her property to the east. The petitioner alleges that the 4th respondent has all along been trying to fill up the drainage canal and that further attempts were made by her for blocking the flow of water through the canal. The 2nd respondent-Municipality took steps for preventing the same and the 4th respondent approached the Munsiff's Court, Paravur. But that suit was dismissed by Ext.P2 judgment. The petitioner highlights that in Ext.P2 the court had held that the 4th respondent has deliberately suppressed the existence of the canal

through her property and blocked the flow of water through it by putting soil causing accumulation of water on the road and neighbouring properties. He alleges that in spite of Ext.P2 judgment, the Municipality did not take steps for restoring the canal. But when the people of the locality including the petitioner approached the R.D.O., the R.D.O. passed Ext.P3 order directing the Municipality to open the thodu within three days. Thereafter also, the 4th respondent was making periodical attempts to close the drainage canal. On 31.7.04 the 3rd respondent-Municipal Secretary issued notice to the husband of the 4th respondent directing him to reopen the drainage canal since the same had been blocked by him. Ext.P4 is copy of that notice. Ext.P5 is copy of the reply submitted by the 4th respondent's husband. Thereafter, the 4th respondent and her husband approached this Court seeking to quash Ext.P4 and a for a direction to the 2nd respondent to go ahead with the public drainage project. Ext.P6 is copy of that Writ Petition. The petitioner got himself impleaded in Ext.P6 Writ Petition. This Court by Ext.P7 judgment dismissed that Writ Petition. It is pointed out that in Ext.P7 also this Court had held that the 4th respondent and her husband had deliberately suppressed material facts and are not entitled for reliefs. The petitioner submits

that in spite of Ext.P7, respondents 1 to 3 have not taken any action pursuant to Ext.P4 which is because of the influence exerted by the 4th respondent and the repeated representations submitted by him and others in this regard have not delivered goods. It is while so that he came to know that respondents 2 and 3 have granted permit to the 4th respondent for making extensions to her existing building. Ext.P8 is copy of the site plan and service plan submitted by her. Ext.P9 is copy of the permit granted to her. The petitioner points out that on the basis of the report submitted by the Building Inspector, the Municipality actually cancelled Ext.P9 permit. But the 4th respondent submitted Ext.P10 explanation which has been accepted by the Municipality and finally Ext.P11 order is issued whereby the permit Ext.P9 is restored subject to certain conditions. On coming to know that Ext.P11 order has been passed by the Municipality, the petitioner submitted Ext.P12 representation before the Municipality. To Ext.P12 the Municipality has not responded so far. It is while so, he came across Ext.P13 notification in Mathrubhoomi daily calling for tenders for constructing drainage canal by the side of Padamadam road. The work of construction of drainage canal is shown as Sl.No.12 therein and an estimate of Rs.2,83,500/- is made for the said purpose. The

petitioner submits that the construction of such a canal was a demand which was put forward by the 4th respondent. She was making such a demand for the sole reason that construction of such a canal by the side of the road will enable her to claim that the drainage canal through her properties is no longer necessary and this, he alleges, will enable her to fill up the canal through her property. According to the petitioner, there is no necessity for constructing a canal by the side of Padamadam road when there is an existing drainage canal through the property of the 4th respondent. Huge expenditure which will be incurred for construction of the new drainage canal will be totally wasteful and the same will benefit only the 4th respondent. The demand for such a canal was agitated by the 4th respondent in proceedings resulting in Exts.P2 and P7 judgments. That being so, resurgence of the said project by respondents 2 and 3 at this point of time is mala fide. Based on the above facts, the petitioner has raised several grounds and filed the Writ Petition for the reliefs already indicated.

3. Respondents 2 and 3 have filed a counter affidavit through which they justify both Ext.P13 notification and also Ext.P11. As regards the allegation of the petitioner that the 4th respondent is likely

to fill up the drainage canal through her property once the public drainage canal which is notified as per Ext.P13 comes into existence, this is what the Municipality says:-

> "With reference to the averments in paragraphs 2 to 8, I may submit that the Municipality is aware of the factual position and that the drainage in existence through the property of the 4th respondent is not going to be interfered with so long as it is found necessary to be retained."

4. The party-respondent has filed a very detailed counter affidavit through which she denies the various asseverations and allegations raised by the petitioner. Ext.R4(a) is copy of the sale deed No.3219/69 by which she became the owner of 10.75 cents of land including the residential building situated thereon. It is alleged that the petitioner who was residing nearby was very much interested in purchasing the above property and became inimical towards her and her family members once they were able to purchase the property. Thereafter, the 4th respondent was negotiating for the purchase of the adjoining land having an extent of 21.5 cents. The petitioner again approached her telling her that he is very much interested in purchasing the said property, being a native of the locality and requested her to refrain from purchasing the said property. But as per

sale deed dated 14.12.1978, the 4th respondent purchased the aforesaid 21.5 cents also and this infuriated the petitioner and eversince the enmity between the parties became aggravated. The present Writ Petition, the 4th respondent contends, is nothing but an attempt to settle private scores with her and her family and mala fide. She alleges that the present Writ Petition is filed suppressing and misrepresenting material facts. In Ext.P1 rough sketch the existing public drain for about 140 metres starting from Pashni thodu along the southern side of the Padamadam road which was constructed by the Municipality in 1997 is virtually suppressed. Ext.R4(b) is a sketch showing the relevant portion of the existing public drain for about for about 140 metres starting from Pashni thodu along the southern side of the Padamadam road which was constructed by the Municipality in 1997. It is the balance portion of the already existing public drain which is now sought to be completed by the Municipality by inviting Ext.P13 tender. The balance portion is also shown in Ext.R4(b). The proposal is only to connect the existing portion by constructing drain on the left over portion so that water logging problem in the area will be solved once and for all. It is pointed out that the petitioner had not raised any objection in 1997 when the Municipality invested public

money and constructed the public drain from Pashni thodu along the southern side of Padamadam road half way. He is raising objection for completion of the remaining portion only because the remaining portion of the public drain is passing through the front side of his gate and also because implementation of Ext.P13 will result in a permanent solution for the water logging problem for the people in that locality, particularly the 4th respondent. It is pointed out that the petitioner resides in Ward No.14 of Paravur Municipality while the 4th respondent resides in Ward No.11. The Ward Sabhas of both these Wards have taken unanimous decision to complete the construction of public drain. Ext.R4(c) is copy of the decision of Ward Sabha of Ward 11 and Ext.r4(d) is copy of the decision of the Ward Sabha of Ward No.14. Ext.R4(e) is copy of the mass representation submitted by 69 residents residing on both sides of the Padamadam road to the Municipal Secretary for taking immediate steps for constructing the balance portion of the public drain. It is submitted that it was on account of the pressing public demand for completion of the drain along the Padamadam road that the Ward Sabhas took decision to complete the existing public drain. It was on account of such demand that the Municipality gave sanction for completion of the public drain

by including the same in the Paravur Municipality Kerala Development Plan 2006-07 as per the common decision of the Municipal Council on 18.2.2006 and issued Ext.P13 public tender notice. It is at this juncture that the petitioner filed the Writ Petition with the objective of sabotaging the completion of construction of the public drain. The 4th respondent also quotes from the commissioner's report in O.S.274 of 1990 and submits that as early as on 16.8.1990 the commissioner had reported that if the public drain is completed along the southern side of the Padamadam road towards the east leading to Pashni thodu, water logging in the entire area can be prevented. Ext.R4(f) produced is copy of sale deed relating to 21.5 cents, i.e., sale deed No.4995/78. It is submitted that the proposed building is not going to be constructed on the property covered by Ext.R4(f). The building will be situated only on the 10.75 cents and since there is no neerchal or thodu or drainage canal running through the aforesaid 10.75 cents of land in respect of which only the permit has been issued to her, there is no necessity as per law to show the lay out of the alleged existing drainage either under Rule 6(2) or under Rule 6(1) of the Kerala Municipality Building Rules.

5. To the counter affidavits, the petitioner has filed a reply

affidavit reiterating his contentions. Ext.P14 produced along with the reply affidavit is copy of the tender notice published in 1996 by the Municipality regarding the development of colony link road connecting Peruvarom-Mannom road to Padamadam road under Slum Development Special Component Scheme. The colony link road project was designed to have a drainage canal through the colony link road running north-south connecting it to the drainage canal already in existence on the northern side of Peruvarom-Mannom road. But it was found that there was no sufficient width for constructing a drainage by the side of colony link road. So for fulfilling the Slum Development Project obligations, the canal was constructed on the eastern side of Padamadam road. Refuting the contention of the 4th respondent that drainage canal remains to be constructed only for about 140 metres, it is pointed out that serial number 12 in Ext.P13 is for construction of a drainage canal for a length of 250 metres. As regards Ext.R4(e) it is contended that the same is a concocted document and that the identity of all the persons who have signed Ext.R4(e) except the 4th respondent and her husband is doubtful. Ext.P15 is copy of a representation submitted by the residents on the southern side of Padamadam road to the Ward Councillor.

6. Very elaborate submissions were addressed before me by Mr.Philip T. Varghese, counsel for the petitioner, Mr.Pius C.Mundadan, counsel for the 4th respondent and also by Mr.T.A.Shaji, Standing Counsel for the Paravur Municipality.

7. Having considered the pleadings in the light of the documents placed on record, particularly Ext.R4(c) and Ext.R4(d), I am of the view that this Court will not be justified in interfering with Ext.P13. Implementation of the work tendered as per Sl.No.12 of Ext.P13 will be to the benefit of a large number of people inhabiting the Paravur Municipality. May be, the 4th respondent against whom some strictures had been made by the civil court and by this Court through Exts.P2 and P7 judgments will also be a beneficiary of the implementation of that project. But neither the civil court nor this Court in Ext.P7 had taken any decision on the feasibility of that project. There seems to be some basis for the apprehension of the petitioner that once the project which is mentioned as item No.12 in Ext.P13 is implemented, there is a likelihood of the 4th respondent filling up the drainage canal which passes through her properties and which was subject matter of Exts.P2 and P7 judgments. Actually the half-hearted manner in which the 2nd respondent-Municipality answered the above case of the petitioner also

justifies that apprehension. But then, before me during the submissions Mr.T.A.Shaji, learned Standing Counsel for the Municipality assured me that the Municipality will preserve that drainage also and will ensure that the 4th respondent does not fill up that drainage or interfere in any manner with the flow of water through that drainage. I record the above submission. Technically, Mr.Philip T.Varghese is right when he submits that what the Municipality should have done on the basis of the Building Inspector's report was to direct the 4th respondent to submit a revised plan showing only the property covered by the document of 1969 since it is on that property alone that the proposed extensions were to be put up. But I notice that the constructions have already been completed.

7. Under these circumstances, I direct the Municipality to annex Ext.P11 also as part of the plan on the basis of which Ext.P9 permit was issued in their records. I declare that notwithstanding the non-showing of the existing drainage in the plan on the basis of which Ext.P9 permit was issued by the Municipality to the 4th respondent, the drainage which is subject matter of Ext.P2 suit and Ext.P7 judgment continues to exist.

8. The Writ Petition accordingly will stand disposed of specifically

declining relief in respect of Ext.P13 notification and declining the relief sought for in respect of Exts.P9 and P11 but directing the Municipality to ensure that the 4th respondent does not interfere with the drainage through her properties which was the subject matter of Ext.P2 judgment of the civil court and Ext.P7 judgment of this Court.

(PIUS C. KURIAKOSE, JUDGE)

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